Today, schools around the world are joining the ranks of their Web-enabled counterparts – connecting to the Internet at an unparalleled rate. As a result, existing information technology (IT) resources are overextended, placing enormous demands on IT professionals to find innovative ways to fulfill the mission-critical needs of technology implementation, systems integration and network management.

At the same time, teachers and administrators are finding themselves challenged by the fact that their students often have better computing skills than they have. Developing teachers' technology expertise has thus become critical – as important as integrating computers into every classroom.

As a leader in e-business technologies and solutions and an acknowledged expert in helping schools worldwide optimize technology resources, IBM can assist you in framing and implementing a technology strategy that supports teaching and learning at every level – throughout your school or school district.

The technology infrastructure: Today's critical factor

Schools that have successfully employed technology to improve student achievement and broaden access to the educational process know that providing Web-based tools and instructional resources that are accessible, compelling and readily available depends on having the right infrastructure in place. They know that even the best solutions won't work unless you start with strong and reliable technology underpinnings.

When developing a technology strategy, administrators and others must face a number of issues, including:

- **Technology implementation**
  How do we get up and running as soon as possible?
- **Network management**
  How do we integrate and manage all the pieces to operate as a seamless whole?
- **IT staff acquisition/retention**
  How do we retain valuable, in-demand IT skills while minimizing the need for network support services?

- **Access/equity for all stakeholders**
  How do we build an infrastructure and access mechanisms for all students, regardless of their socio-economic status?
- **Managing within budget**
  How can we get the best return on our investments in people and technology?
- **High availability and performance**
  How can we ensure that our servers and networks will be secure and available when we need them?

Complicating these challenges is the existence of "homegrown" solutions and legacy systems that schools – many strapped for funding – simply aren't ready to dispose of. The priority, then, becomes to select the right technology partner – one who has the people, products, skills and services to help you build and manage a robust technology infrastructure that can meet the growing needs of your constituents while safeguarding your current investments in technology and other resources.

IBM has helped Alpena, one of the largest geographic districts in Michigan, create an infrastructure that allows our students and staff to become information-literate learners who use technology to access, use and evaluate information effectively.

In the classroom, our students are researching topics on the internet; in science, they collaborate on PowerPoint presentations, for example, to illustrate the sequence of forest growth; in basic math, they use spreadsheets to calculate data, such as distances between cities.

Alpena has the foundation for a wide variety of technology-supported classroom activities. With IBM, we are turning our vision into a reality.

Mark R. Semp
Director, Information Systems
Alpena Public School District
Alpena, Michigan

IBM can be that technology partner. We are uniquely positioned to help you take the best advantage of a rich collection of e-business solutions for schools – as well as hardware, software, consulting, services and financing centered around the needs of your school district and its constituents – students, teachers and the community at large. And all of these resources come from one provider – IBM.

We know the importance of protecting past and current IT investments, and will work with you to help integrate any or all of your current systems into a tightly integrated, e-business-ready environment. Our solutions run on all leading technology platforms – IBM and non-IBM alike. What's more, our servers, software and industry-leading middleware are all based on open standards, offering further assurance that we can deliver the result that is right for you.

Our added strength is our people – experts not only in technology, but in the education industry as well. The people from IBM Global Services are professionals who understand e-business and its impact on schools. They're people who know how to help you leverage your current infrastructure while monitoring your budget. People who can act as your technology advisors. Innovative thinkers who will roll up their sleeves and work with you until the job is done. People you can trust, and who are passionate about what they do.

IBM Education Consulting Services

IBM education consultants have worked with schools and school systems across nations and around the world to use technology – with a growing emphasis on the Internet and e-business – as a tool for improving teaching, learning and administration. As a result, they bring a wealth of education and technology experience to every engagement, as well as proven methodologies and software tools.

Our professionals can customize a wide range of services to address your precise needs, including technology planning and implementation, curriculum and technology assessment, complex systems integration and professional development. And it's good to know that these services are available to support you at any level of technological capability or e-business implementation.
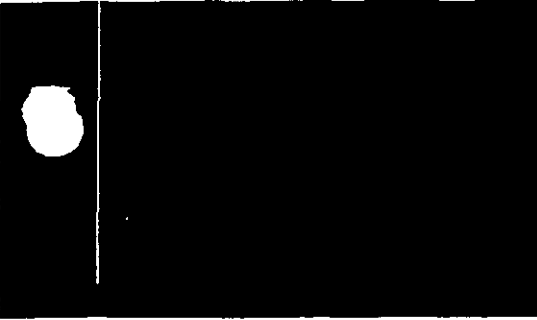
Systems Integration

IBM systems integration capabilities are renowned worldwide, and represent one of the core competencies of the IBM Consulting and Services Practice for Schools. These resources come into play after your school system articulates its IT vision and completes the planning phase. Based on established project-management capabilities and methodologies, IBM systems integration encompasses:

- Network Implementation
- Student Information Systems implementation
- Enterprise Resource Planning (ERP) implementation
- Virtual Schooling development

Professional development

IBM can design a professional development program for your school district that will exploit the advantages of in-person, online and computer-based training. Our wide range of training modules and services are designed to make it easy for you to integrate technology into the curriculum, improve productivity and efficiency, and enhance the overall learning environment.

IBM e-business Solutions for Schools range from data warehousing and distributed learning to professional development for teachers and staff. In addition, we can provide you with *a sound framework of concepts and technologies* designed to facilitate communication, collaboration and transaction execution in your school system using the power and flexibility of the Internet. All while optimizing your existing IT investments.

Our world-class portfolio of field-proven software, middleware and hardware from IBM and two leading IBM companies – Lotus® Development Corporation and Tivoli®–include:

• IBM @server systems: Fueling your e-business

IBM @server represents a new generation of servers – a highly diverse, all inclusive product line designed to address the varying requirements of school environments around the world – from Linux® Windows NT,® HP and UNIX® to mid-range and mainframe platforms alike. IBM @server systems encompass pre-packaged solutions combining world-class IBM hardware, industry-leading software and middleware; plus unprecedented levels of value, flexibility and support – including convenient financing.

• DB2® Universal Database

The database is the foundation upon which successful e-business is built – the hub for managing data and recording student and organizational information. With more than a million service licenses worldwide, DB2 is today empowering the world's e-business solutions with an open, industrial-strength database management platform for business intelligence, transaction processing and a broad range of networked applications.

• IBM WebSphere™

Its integrated business and Web content development tools and Web site management capabilities rank IBM WebSphere second to none in helping businesses and schools build, implement and manage powerful, portable e-business applications. Built on industry standards, including Java™ and XML, WebSphere offers the flexibility to integrate e-business solutions with data and other applications.

• IBM MQSeries®

An undisputed industry leader in messaging and integration middleware – a robust, scalable information backbone for connecting applications and integrating processes. MQSeries is compatible across 35 operating systems – the universal, reliable connector that links virtually everything to everything. MQSeries Integrator brings together applications, databases and networks; MQSeries Workflow unifies business processes from end to end.

• Lotus Domino™

Among the fastest, most secure solutions for supporting Web-based communication, collaboration and learning. Domino can be combined with Lotus LearningSpace® Anytime and with Raven – the first Lotus knowledge-management system (expected to be made available in the second half of 2000).

• Tivoli

Businesses and school districts everywhere use Tivoli advanced application and management software to ensure the high availability critical for distributed computing and e-business environments. With Tivoli, your school system can distribute software upgrades to thousands of computers on a single network – from PCs to mainframes – checking each for viruses and security breaches and monitoring hundreds of other critical applications.

IBM: A charter E-rate Service Provider

The E-rate Program in the U.S., formally called the Universal Service Fund (USF), enables qualifying schools and districts to obtain telecommunications equipment, Internet access and internal connections products and services at discounts that are federally subsidized. E-rate can help you leverage your exist-

ing budget exponentially. For example, if your district has a US$1 million operating budget and qualifies for a 90% discount, you could potentially have the equivalent of a US$10 million budget. IBM has been an E-rate Service Provider since inception of the program. Our Service Provider Identification Number is 143005607.*

As an E-rate Service Provider, IBM offers a host of industry-leading, scalable and robust products and services. These include network design and implementation from IBM Global Services and the IBM/Cisco Alliance; classroom wiring, wireless connectivity and equipment maintenance services from IBM Global Services: WebSphere Internet servers; IBM @server systems and Lotus Domino-based e-mail systems.

Take the next step

The IBM education industry team has worked with schools around the globe for decades. We will be there when changing requirements dictate that you revisit your technology plan; we'll help you make it right and keep it right, including when that requires combining our products with those from other vendors.

To learn more about IBM e-business Solutions for Schools and how our global team of technology and industry experts can help you build the right technology infrastructure for your institution, please visit our Web site at:

ibm.com/solutions/education/schools.

IBM.

G580-3550-00

Appendix G – Signature Page

IBM (we) will provide, and EPISD (you) agree to accept, IBM Global Services (Services) as EPISD's "Strategic Technology Solution Provider" under the terms and conditions of the IBM Customer Agreement and this response to RFP #101-00, Request for Proposals for Strategic Technology Solution Provider.

A unique Statement of Work (SOW) will be developed for each initiative or project which we are assigned by EPISD, per the Legal Approach provisions of this Proposal. EPISD must approve and sign each SOW before work begins on that project.

This Proposal will remain valid through December 31, 2001.

Both of us agree that the complete agreement between us regarding these Services will consist of 1) this Proposal and 2) the IBM Customer Agreement (or any equivalent agreement signed by both of us).

Agreed to:
El Paso Independent School District

Agreed to:
International Business Machines Corporation

By _____
(Authorized Signature)

By _____
(Authorized Signature)

Name_____
(type or print)

Name_____
(type or print)

Date_____

Date_____

Customer Number: 2760555 _____	IBM Customer Agreement No. NB8C298 _____
Customer Address: El Paso Independent School District 6531 Boeing Dr. El Paso, TX 79925	IBM Office Address: 4487 North Mesa El Paso, Texas 79902

Project name or identifier: EPISD Strategic Technology Solution Provider
IBM Office Number: TDC
Start Date: July 1, 2001
End Date: June 30, 2002

Before the
FEDERAL COMMUNICATIONS COMMISSION **RECEIVED**
Washington, D.C.

In the Matter of:	§
	§
Request for Review of the Decision of the	§
Universal Service Administrator by	§
	§
El Paso Independent School District	§
	§
	§
Federal-State Joint Board on Universal Service	§ CC Docket No. 96-45
	§
Changes to the Board of Directors of the	§ CC Docket No. 97-21
National Exchange Carrier Association, Inc.	§

APPENDIX TO REQUEST FOR REVIEW
OF EL PASO INDEPENDENT SCHOOL DISTRICT

Volume II of Three

Exhibit No.		*Description*
Exhibit "8"	-	2001 Contract
Exhibit "9"	-	2002 Form 470

8

IBM Customer Agreement

Thank you for doing business with us. We strive to provide you with high quality Products and Services. If, at any time, you have any questions or problems, or are not completely satisfied, please let us know. Our goal is to do our best for you.

This IBM Customer Agreement (called the "Agreement") covers business transactions you may do with us to purchase Machines, license Programs, and acquire Services.

This Agreement and its applicable Attachments and Transaction Documents are the complete agreement regarding these transactions, and replace any prior oral or written communications between us.
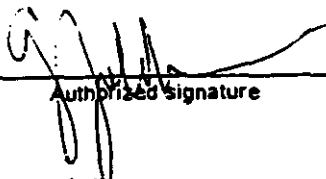
By signing below for our respective Enterprises, both of us agree to the terms of this Agreement. Once signed, 1) any reproduction of this Agreement, an Attachment, or Transaction Document made by reliable means (for example, photocopy or facsimile) is considered an original and 2) all Products and Services you order under this Agreement are subject to it.

Agreed to: (Enterprise name)

By _____
        Authorized Signature

Name (type or print):

Date:

Enterprise number:

Enterprise address:

Agreed to:
International Business Machines Corporation

By _____
        Authorized signature

Name (type or print):

Date:

Agreement number:

IBM address:

After signing, please return a copy of this Agreement to the "IBM address" shown above.

Page 1 of 17

IBM Customer Agreement

Table of Contents

IBM Customer Agreement

Part 1 - General

1.1 Definitions

Customer-set-up Machine is an IBM Machine that you install according to our instructions.

Date of Installation is the following:

1. for an IBM Machine we are responsible for installing, the business day after the day we install it or, if you defer installation, make it available to you for subsequent installation by us;

2. for a Customer-set-up Machine and a non-IBM Machine, the second business day after the Machine's standard transit allowance period; and

3. for a Program, the latest of —

    a. the day after its testing period ends,

    b. the second business day after the Program's standard transit allowance period,

    c. the date, specified in a Transaction Document, on which we authorize you to make a copy of the Program, or

    d. the date you distribute a copy of a chargeable component in support of your authorized use of the Program.

Designated Machine is either 1) the machine on which you will use a Program for processing and which we require you to identify to us by type/model and serial number, or 2) any machine on which you use the Program if we do not require you to provide this identification to us.

Enterprise is any legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent. The term "Enterprise" applies only to the portion of the enterprise located in the United States or Puerto Rico.

Machine is a machine, its features, conversions, upgrades, elements, or accessories, or any combination of them. The term "Machine" includes an IBM Machine and any non-IBM Machine (including other equipment) that we may provide to you.

Materials are literary works or other works of authorship (such as programs, program listings, programming tools, documentation, reports, drawings and similar works) that we may deliver to you as part of a Service. The term "Materials" does not include Programs or Licensed Internal Code.

Product is a Machine or a Program.

Program is the following, including the original and all whole or partial copies:

1. machine-readable instructions and data;

2. components;

3. audio-visual content (such as images, text, recordings, or pictures); and

4. related licensed materials.

The term "Program" includes an IBM Program and any non-IBM Program that we may provide to you. The term does not include Licensed Internal Code or Materials.

Service is performance of a task, provision of advice and counsel, assistance, or access to a resource (such as access to an information database) we make available to you.

Specifications is a document that provides information specific to a Product. For an IBM Machine, we call the document "Official Published Specifications." For an IBM Program, we call it "Licensed Program Specifications," or "License Information."

Specified Operating Environment is the Machines and Programs with which a Program is designed to operate, as described in the Program's Specifications.

1.2 Agreement Structure

Attachments

Some Products and Services have terms in addition to those we specify in this Agreement. We provide the additional terms in documents called "Attachments," which are also part of this Agreement. Attachments will be signed by both of us if requested by either of us.

Transaction Documents

For each business transaction, we will provide you with the appropriate "Transaction Documents" that confirm the specific details of the transaction. Transaction Documents will be signed by both of us if requested by either of us. The following are examples of Transaction Documents with examples of the information they may contain:

1. addenda (contract-period duration, start date, and total quantity);

2. exhibits (eligible Products by category);

3. invoices (item, quantity, and amount due);

4. statements of work (scope of Services, responsibilities, deliverables, completion criteria, estimated schedule or contract period, and charges); and

5. supplements (Machine quantity and type ordered, price, estimated shipment date, and warranty period).

Conflicting Terms

If there is a conflict among the terms in the various documents, those of an Attachment prevail over those of this Agreement. The terms of a Transaction Document prevail over those of both of these documents.

Our Acceptance of Your Order

A Product or Service becomes subject to this Agreement when we accept your order by doing any of the following:

1. sending you a Transaction Document;

2. shipping the Machine or making the Program available to you; or

3. providing the Service.

Your Acceptance of Additional Terms

You accept the additional terms in an Attachment or Transaction Document by doing any of the following:

1. signing the Attachment or Transaction Document;

2. using the Product or Service, or allowing others to do so; or

3. making any payment for the Product or Service.

1.3 Delivery

We will try to meet your delivery requirements for Products and Services you order, and will inform you of their status. Transportation charges, if applicable, will be specified in a Transaction Document.

1.4 Charges and Payment

The amount payable for a Product or Service will be based on one or more of the following types of charges:

1. one-time (for example, the price of a Machine);

2. recurring (for example, a periodic charge for Programs or measured use of Services);

3. time and materials (for example, charges for hourly Services); or

4. fixed price (for example, a specific amount agreed to between us for a custom Service).

Depending on the particular Product, Service, or circumstance, additional charges may apply (such as special handling or travel related expenses). We will inform you in advance whenever additional charges apply.

Recurring charges for a Product begin on its Date of Installation. Charges for Services are billed as we specify which may be in advance, periodically during the performance of the Service, or after the Service is completed.

Amounts are due upon receipt of invoice and payable as we specify in a Transaction Document. You agree to pay accordingly, including any late payment fee.

If any authority imposes a duty, tax, levy, or fee, excluding those based on our net income, upon any transaction under this Agreement, then you agree to pay that amount as specified in the invoice or supply exemption documentation. You are responsible for personal property taxes for each Product from the date we ship it to you.

One-time and recurring charges may be based on measurements of actual or authorized use (for example, number of users or processor size for Programs, meter readings for maintenance Services, or connect time for network Services). You agree to provide actual usage data if we specify. If you make changes to your environment that impact use charges (for example, change processor size or configuration for Programs), you agree to promptly notify us and pay any applicable charges. Recurring charges will be adjusted accordingly. Unless we agree otherwise, we do not give credits or refunds for charges already due or paid. In the event that we change the basis of measurement, our terms for changing charges will apply.

We may increase recurring charges for Products and Services, as well as labor rates and minimums for Services provided under this Agreement, by giving you three months' written notice. An increase applies on the first day of the invoice or charging period on or after the effective date we specify in the notice.

We may increase one-time charges without notice. However, an increase to one-time charges does not apply to you if 1) we receive your order before the announcement date of the increase and 2) one of the following occurs within three months after our receipt of your order:

1. we ship you the Machine or make the Program available to you;

2. you make an authorized copy of a Program or distribute a chargeable component of a Program to another Machine; or

3. a Program's increased use charge becomes due.

You receive the benefit of a decrease in charges for amounts which become due on or after the effective date of the decrease.

Services for which you prepay must be used within the applicable contract period. Unless we specify otherwise, we do not give credits or refunds for unused prepaid Services.

1.5 Changes to the Agreement Terms

In order to maintain flexibility in our business relationship, we may change the terms of this Agreement by giving you three months' written notice. However, these changes are not retroactive. They apply, as of the effective date we specify in the notice, only to new orders

and on-going transactions (such as licenses, except that changes to license termination terms are effective only for new orders). Part 5 of this Agreement contains additional provisions for changes to the terms of individual Service transactions.

Otherwise, for a change to be valid, both of us must sign it. Additional or different terms in any written communication from you (such as an order) are void.

1.6   IBM Business Partners

We have signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support certain Products and Services. When you order our Products or Services (marketed to you by IBM Business Partners) under this Agreement, we confirm that we are responsible for providing the Products or Services to you under the warranties and other terms of this Agreement. We are not responsible for 1) the actions of IBM Business Partners, 2) any additional obligations they have to you, or 3) any products or services that they supply to you under their agreements.

1.7   Mutual Responsibilities

Both of us agree that under this Agreement:

1. neither of us grants the other the right to use its trademarks, trade names, or other designations in any promotion or publication without prior written consent;

2. all information exchanged is nonconfidential. If either of us requires the exchange of confidential information, it will be made under a signed confidentiality agreement;

3. each is free to enter into similar agreements with others;

4. each grants the other only the licenses and rights specified. No other licenses or rights (including licenses or rights under patents) are granted;

5. each may communicate with the other by electronic means and such communication is acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity;

6. each will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations;

7. neither of us will bring a legal action more than two years after the cause of action arose; and

8. neither of us is responsible for failure to fulfill any obligations due to causes beyond its control.

1.8   Your Other Responsibilities

You agree:

1. not to assign, or otherwise transfer, this Agreement or your rights under this Agreement, delegate your obligations, or resell any Service, without our prior written consent. Any attempt to do so is void;

2. to acquire Machines with the intent to use them within your Enterprise and not for reselling, leasing, or transferring to a third party, unless either of the following applies —

    a. you are arranging lease-back financing for the Machines, or

    b. you purchase them without any discount or allowance, and do not remarket them in competition with our authorized remarketers;

3. to allow us to install mandatory engineering changes (such as those required for safety) on a Machine. Any parts we remove become our property. You represent that you have the permission from the owner and any lien holders to transfer ownership and possession of removed parts to us;

4. that you are responsible for the results obtained from the use of the Products and Services;

5. to provide us with sufficient, free, and safe access to your facilities for us to fulfill our obligations; and

6. to comply with all applicable export and import laws and regulations.

1.9 Patents and Copyrights

For purposes of this Section, the term "Product" includes Materials (alone or in combination with Products we provide to you as a system) and Licensed Internal Code.

If a third party claims that a Product we provide to you infringes that party's patent or copyright, we will defend you against that claim at our expense and pay all costs, damages, and attorney's fees that a court finally awards, provided that you:

1. promptly notify us in writing of the claim; and

2. allow us to control, and cooperate with us in, the defense and any related settlement negotiations.

If such a claim is made or appears likely to be made, you agree to permit us to enable you to continue to use the Product, or to modify it, or replace it with one that is at least functionally equivalent. If we determine that none of these alternatives is reasonably available, you agree to return the Product to us on our written request. We will then give you a credit equal to:

1. for a Machine, your net book value provided you have followed generally-accepted accounting principles;

2. for a Program, the amount paid by you or 12 months' charges (whichever is less); and

3. for Materials, the amount you paid us for the Materials.

This is our entire obligation to you regarding any claim of infringement.

Claims for Which We are Not Responsible

We have no obligation regarding any claim based on any of the following:

1. anything you provide which is incorporated into a Product;

2. your modification of a Product, or a Program's use in other than its Specified Operating Environment;

3. the combination, operation, or use of a Product with other Products not provided by us as a system, or the combination, operation, or use of a Product with any product, data, or apparatus that we did not provide; or

4. infringement by a non-IBM Product alone, as opposed to its combination with Products we provide to you as a system.

1.10 Limitation of Liability

Circumstances may arise where, because of a default on our part or other liability, you are entitled to recover damages from us. In each such instance, regardless of the basis on which you are entitled to claim damages from us (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), we are liable for no more than:

1. payments referred to in our patents and copyrights terms described above;

2. damages for bodily injury (including death) and damage to real property and tangible personal property; and

3. the amount of any other actual direct damages up to the greater of $100,000 or the charges (if recurring, 12 months' charges apply) for the Product or Service that is the subject of the claim. For purposes of this item, the term "Product" includes Materials and Licensed Internal Code.

This limit also applies to any of our subcontractors and Program developers. It is the maximum for which we and our subcontractors and Program developers are collectively responsible.

Items for Which We are Not Liable

Under no circumstances are we, our subcontractors, or Program developers liable for any of the following:

1. third-party claims against you for damages (other than those under the first two items listed above);

2. loss of, or damage to, your records or data; or

3. special, incidental, or indirect damages or for any economic consequential damages (including lost profits or savings), even if we are informed of their possibility.

1.11 Agreement Termination

You may terminate this Agreement on written notice to us following the expiration or termination of your obligations.

Either of us may terminate this Agreement if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time to comply.

Any terms of this Agreement which by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to both of our respective successors and assignees.

1.12 Geographic Scope

All your rights, all our obligations, and all licenses (except for Licensed Internal Code and as specifically granted) are valid only in the United States and Puerto Rico.

1.13 Governing Law

The laws of the State of New York govern this Agreement.

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

IBM Customer Agreement

Part 2 - Warranties

2.1 The IBM Warranties

Warranty for IBM Machines

For each IBM Machine, we warrant that it:

1. is free from defects in materials and workmanship; and
2. conforms to its Specifications.

The warranty period for a Machine is a specified, fixed period commencing on its Date of Installation. During the warranty period, we provide repair and exchange Service for the Machine, without charge, under the type of Service we designate for the Machine.

If a Machine does not function as warranted during the warranty period and we are unable to either 1) make it do so, or 2) replace it with one that is at least functionally equivalent, you may return it to us and we will refund your money.

Additional terms regarding Service for Machines during and after the warranty period are contained in Part 5.

Warranty for IBM Programs

For each warranted IBM Program, we warrant that when it is used in the Specified Operating Environment, it will conform to its Specifications.

The warranty period for a Program expires when its Program Services are no longer available. During the warranty period, we provide defect-related Program Services without charge. Program Services are available for a warranted Program for at least one year following its general availability.

If a Program does not function as warranted during the first year after you obtain your license and we are unable to make it do so, you may return the Program to us and we will refund your money. To be eligible, you must have obtained your license while Program Services (regardless of the remaining duration) were available for it. Additional terms regarding Program Services are contained in Part 4.

Warranty for IBM Services

For each IBM Service, we warrant that we perform it:

1. using reasonable care and skill; and
2. according to its current description (including any completion criteria) contained in this Agreement, an Attachment, or a Transaction Document.

Warranty for Systems

Where we provide Products to you as a system, we warrant that they are compatible and will operate with one another. This warranty is in addition to our other applicable warranties.

2.2 Extent of Warranty

If a Machine is subject to federal or state consumer warranty laws, our statement of limited warranty included with the Machine applies in place of these Machine warranties.

The warranties will be voided by misuse, accident, modification, unsuitable physical or operating environment, operation in other than the *Specified Operating Environment, improper maintenance* by you, removal or alteration of Product or parts identification labels, or failure caused by a product for which we are not responsible.

THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

2.3   Items Not Covered by Warranty

We do not warrant uninterrupted or error-free operation of a Product or Service or that we will correct all defects.

We will identify IBM Products that we do not warrant.

Unless we specify otherwise, we provide Materials, non-IBM Products, and non-IBM Services WITHOUT WARRANTIES OF ANY KIND. However, non-IBM manufacturers, suppliers, or publishers may provide their own warranties to you.

IBM Customer Agreement

Part 3 - Machines

3.1 Title and Risk of Loss

When we accept your order, we agree to sell you the Machine described in a Transaction Document. We transfer title to you or, if you choose, your lessor when we ship the Machine. However, we reserve a purchase money security interest in the Machine until we receive the amounts due. For a feature, conversion, or upgrade involving the removal of parts which become our property, we reserve the security interest until we receive the amounts due and the removed parts. You agree to sign an appropriate document to permit us to perfect our purchase money security interest.

We bear the risk of loss for the Machine up to and including its Date of Installation. Thereafter, you assume the risk.

3.2 Production Status

Each IBM Machine is manufactured from new parts, or new and used parts. In some cases, a Machine may not be new and may have been previously installed. Regardless of a Machine's production status, our appropriate warranty terms apply.

3.3 Installation

For the Machine to function properly, it must be installed in a suitable physical environment. You agree to provide an environment meeting the specified requirements for the Machine.

We have standard installation procedures. We will successfully complete these procedures before we consider an IBM Machine (other than a Machine for which you defer installation or a Customer-set-up Machine) installed.

You are responsible for installing a Customer-set-up Machine (we provide instructions to enable you to do so) and a non-IBM Machine.

Machine Features, Conversions, and Upgrades

We sell features, conversions, and upgrades for installation on Machines, and, in certain instances, only for installation on a designated, serial-numbered Machine. Many of these transactions involve the removal of parts and their return to us. As applicable, you represent that you have the permission from the owner and any lien holders to 1) install features, conversions, and upgrades and 2) transfer ownership and possession of removed parts (which become our property) to us. You further represent that all removed parts are genuine, unaltered, and in good working order. A part that replaces a removed part will assume the warranty or maintenance Service status of the replaced part. You agree to allow us to install the feature, conversion, or upgrade within 30 days of its delivery. Otherwise, we may terminate the transaction and you must return the feature, conversion, or upgrade to us at your expense.

3.4 Licensed Internal Code

Certain Machines we specify (called "Specific Machines") use Licensed Internal Code (called "Code"). We own copyrights in Code or have the right to license Code. We or a third party own all copies of Code, including all copies made from them.

We will identify each Specific Machine in a Transaction Document. If you are the rightful possessor of a Specific Machine, we grant you a license to use the Code (or any replacement we provide) on, or in conjunction with, only the Specific Machine, designated by serial

number, for which the Code is provided. We license the Code to only one rightful possessor at a time.

Under each license, we authorize you to do only the following:

1. execute the Code to enable the Specific Machine to function according to its Specifications;

2. make a backup or archival copy of the Code (unless we make one available for your use), provided you reproduce the copyright notice and any other legend of ownership on the copy. You may use the copy only to replace the original, when necessary; and

3. execute and display the Code as necessary to maintain the Specific Machine.

You agree to acquire any replacement for, or additional copy of, Code directly from us in accordance with our standard policies and practices. You also agree to use that Code under these terms.

You may transfer possession of the Code to another party only with the transfer of the Specific Machine. If you do so, you must 1) destroy all your copies of the Code that were not provided by us, 2) either give the other party all your IBM-provided copies of the Code or destroy them, and 3) notify the other party of these terms. We license the other party when it accepts these terms by initial use of the Code. These terms apply to all Code you acquire from any source.

Your license terminates when you no longer rightfully possess the Specific Machine.

Actions You May Not Take

You agree to use the Code only as authorized above. You may not do, for example, any of the following:

1. otherwise copy, display, transfer, adapt, modify, or distribute the Code (electronically or otherwise), except as we may authorize in the Specific Machine's Specifications or in writing to you;

2. reverse assemble, reverse compile, or otherwise translate the Code unless expressly permitted by applicable law without the possibility of contractual waiver;

3. sublicense or assign the license for the Code; or

4. lease the Code or any copy of it.

3.5   Machine Code

For certain Machines we may provide basic input/output system code, utilities, diagnostics, device drivers, or microcode (collectively called "Machine Code"). This Machine Code is licensed under the terms of the agreement provided with it.

IBM Customer Agreement

Part 4 - Programs

4.1 License

When we accept your order, we grant you a nonexclusive, nontransferable license to use the Program. Programs are owned by International Business Machines Corporation or one of its subsidiaries ("IBM") or an IBM supplier and are copyrighted and licensed (not sold).

4.2 License Details

Under each license, we authorize you to:

1. use the Program's machine-readable portion on only the Designated Machine. If the Designated Machine is inoperable, you may use another Machine temporarily. If the Designated Machine cannot assemble or compile the Program, you may assemble or compile the Program on another Machine.

   If you change a Designated Machine previously identified to us, you agree to notify us of the change and its effective date;

2. use the Program to the extent of authorizations you have acquired;

3. make and install copies of the Program, to support the level of use authorized, provided you reproduce the copyright notices and any other legends of ownership on each copy or partial copy; and

4. use any portion of the Program we 1) provide in source form, or 2) mark restricted (for example, "Restricted Materials of IBM") only to —

   a. resolve problems related to the use of the Program, and

   b. modify the Program so that it will work together with other products.

You agree to comply with any additional terms we may place on a Program. We identify these in the Program's Specifications or in a Transaction Document.

Actions You May Not Take

You agree not to:

1. reverse assemble, reverse compile, or otherwise translate the Program; or

2. sublicense, rent, or lease the Program.

4.3 Program Components Not Used on the Designated Machine

Some Programs have components that are designed for use on machines other than the Designated Machine on which the Program is used. You may make copies of a component and its documentation in support of your authorized use of the Program provided you notify us of the component's actual date of distribution.

4.4 Distributed System License Option

For some Programs, you may make a copy under a Distributed System License Option (called a "DSLO" copy). We charge less for a DSLO copy than we do for the original license (called the "Basic" license). In return for the lesser charge, you agree to do the following while licensed under a DSLO:

1. have a Basic license for the Program;

2. provide problem documentation and receive Program Services (if any) only through the location of the Basic license; and

3. distribute to, and install on, the DSLO's Designated Machine, any release, correction, or bypass that we provide for the Basic license.

4.5 Program Testing

We provide a testing period for certain Programs to help you evaluate if they meet your needs. If we offer a testing period, it will start 1) the second business day after the Program's standard transit allowance period, or 2) on another date specified in a Transaction Document. We will inform you of the duration of the Program's testing period.

We do not provide testing periods for DSLO copies.

4.6 Packaged Programs

We provide certain Programs together with their own license agreements. These Programs are licensed under the terms of the agreements provided with them.

4.7 Program Protection

For each Program, you agree to:

1. ensure that anyone who uses it (accessed either locally or remotely) does so only for your authorized use and complies with our terms regarding Programs; and

2. maintain a record of all copies and provide it to us at our request.

4.8 Program Services

We provide Program Services for warranted Programs and for selected other Programs. If we can reproduce your reported problem in the Specified Operating Environment, we will issue defect correction information, a restriction, or a bypass. We provide Program Services for only the unmodified portion of a current release of a Program.

We provide Program Services 1) on an on-going basis (with at least six months' written notice before we terminate Program Services), 2) until the date we specify, or 3) for a period we specify.

4.9 License Termination

You may terminate the license for a Program on one month's written notice, or at any time during the Program's testing period.

Licenses for certain replacement Programs may be acquired for an upgrade charge. When you acquire these replacement Programs, you agree to terminate the license of the replaced Programs when charges become due, unless we specify otherwise.

We may terminate your license if you fail to comply with its terms. If we do so, your authorization to use the Program is also terminated.

IBM Customer Agreement

Part 5 - Services

5.1 IBM Services

Services may be either standard offerings or customized to your specific requirements. Each Service transaction may include one or more Services that:

1. expire at task completion or an agreed upon date;

2. automatically renew as another transaction with a specified contract period. Renewals will continue until either of us terminates the Service; or

3. do not expire and are available for your use until either of us terminates the Service.

5.2 Personnel

Each of us is responsible for the supervision, direction, and control of our respective personnel.

We reserve the right to determine the assignment of our personnel.

We may subcontract a Service, or any part of it, to subcontractors selected by us.

5.3 Materials Ownership and License

We will specify Materials to be delivered to you. We will identify them as being "Type I Materials," "Type II Materials," or otherwise as we both agree. If not specified, Materials will be considered Type II Materials.

Type I Materials are those, created during the Service performance period, in which you will have all right, title, and interest (including ownership of copyright). We will retain one copy of the Materials. You grant us 1) an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, distribute (internally and externally) copies of, and prepare derivative works based on Type I Materials and 2) the right to authorize others to do any of the former.

Type II Materials are those, created during the Service performance period or otherwise (such as those that preexist the Service), in which we or third parties have all right, title, and interest (including ownership of copyright). We will deliver one copy of the specified Materials to you. We grant you an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute, within your Enterprise only, copies of Type II Materials.

Each of us agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the licenses granted in this Section.

Any idea, concept, know-how, or technique which relates to the subject matter of a Service and is developed or provided by either of us, or jointly by both of us, in the performance of a Service may (subject to applicable patents and copyrights) be freely used by either of us.

5.4 Changes to Service Terms

We may change the terms of Services that are renewable or non-expiring by giving you three months' written notice. However, these changes are not retroactive. They apply immediately to renewal transactions and as of the effective date we specify in the notice to all existing transactions. If we make a change to the terms of a renewable Service that 1) affects your current contract period and 2) you consider unfavorable, on your request, we will defer it until the end of that contract period.